

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Bky. No.: 04-50747 GFK

JOSEPH R. FRANZINELLI and
JULIE A. FRANZINELLI,

Debtors.

**NOTICE OF MOTION AND MOTION OBJECTING
TO PROPERTY CLAIMED AS EXEMPT**

TO: THE COURT, THE DEBTORS, THE DEBTORS' ATTORNEY, PETER C. GREENLEE,
AND THE UNITED STATES TRUSTEE

1. Robert R Kanuit, Trustee of the bankruptcy estate of the above-named debtors moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 p.m., on October 6, 2004, before the Honorable Gregory F. Kishel, in Courtroom 2 at the United States Courthouse, 515 West First Street, in Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 29, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than September 26, 2004, which is ten (10) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 522, 11 U.S.C. § 542, Bankruptcy Rules 4003d, 9013 and 9014, and Local Rules 702 and 1201, et seq. This proceeding is a core proceeding. The petition commencing this Chapter 7

case was filed on June 25, 2004. The case is now pending in this Court. Movant is entitled to object to Debtors' claims of exemption pursuant to Bankruptcy Rule 4003.

5. This motion arises under 11 U.S.C. § 522, 11 U.S.C. § 542, and Bankruptcy Rule 4003 and Local Rule 702. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to Debtors' nonexempt property.

6. Debtors have claimed as exempt anticipated 2004 tax refunds under M.S.A. §550.01 and §510.02, to which movant objects.

7. Movant objects to debtors' claim of exemption because tax refunds are not exempt under M.S.A. §550.01 or §510.02.

WHEREFORE, trustee, Robert R. Kanuit, moves the Court for an order sustaining his objection to debtors' claimed exemption and such other relief as may be just and equitable.

Dated this 9th day of September, 2004.

/e/ Robert R. Kanuit
Robert R. Kanuit (#0252530)
Chapter 7 Trustee
4815 W. Arrowhead Road, #230
Hermantown, MN 55811
(218) 722-7722

VERIFICATION

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 9, 2004

/e/ Robert R. Kanuit
Robert R. Kanuit

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UNSWORN DECLARATION FOR PROOF OF SERVICE

The undersigned, being an employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Motion Objecting to Property Claimed as Exempt and (proposed) Order** upon the persons named below by mailing to them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Joseph and Julie Franzinelli
1827-1/2 Eighth Avenue East
Hibbing, MN 55746

Mr. Peter C. Greenlee
Greenlee Law Office
PO Box 1067
Twig, MN 55791

U.S. Department of Justice
Office of the United States Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Dated this 9th day of September, 2004.

/e/ Bonnie K. Vanderpool
Bonnie K. Vanderpool

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ORDER

At Duluth, Minnesota, on October 6, 2004.

Upon the objection to property claimed as exempt filed by the trustee and upon all the files and records of the proceedings herein,

IT IS ORDERED:

The trustee's objection is sustained and the debtors' 2004 tax refunds are not exempt.

Honorable Gregory F. Kishel
United States Bankruptcy Judge